

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-11576-DPW

PARTNERS HEALTHCARE
SYSTEM, INC.,

Defendant.

UNITED STATES' REPLY TO REPLY OF DEFENDANT PARTNERS
HEALTHCARE SYSTEM, INC. TO UNITED STATES' RESPONSE TO
NOTICE OF SUPPLEMENTAL AUTHORITY

On July 29, 2008, the United States filed a response to Defendant's Notice of Supplemental Authority regarding the recent District Court decision in U.S. v. Mt. Sinai. The United States, in clear and unambiguous terms, stated in that response to Partners' Notice of Supplemental Authority, that Mt. Sinai, not Partners, had conceded the scholarship issue Mt. Sinai had raised in U.S. v. Mt. Sinai. Partners, in its reply, erroneously reads our clear response as stating that it was conceding the scholarship issue in this case. Whether the issue here be the scholarship issue raised by Partners in its discovery responses¹ or the one raised in its brief, does not matter. The important point is that Partners does not deny that its counsel, the same counsel as in this case, conceded the scholarship issue on behalf of Mt. Sinai in U.S. v. Mt. Sinai and

¹Partners, in its reply, states that the United States admitted in its reply brief that it briefed the wrong scholarship issue. That is patently false. In fact, as the defendant is well aware, and as we explained at the outset of our reply brief, that scholarship issue was briefed solely because the only written position taken by the defendant at the time the brief was filed was that it was contending the salary payments were "qualified scholarships" exempt under IRC §3121(a)(20). The first time the "non-compensatory" scholarship issue was raised by the defendant was in its first brief (doc. no. 19) filed in response to our motion for summary judgment where it abandoned the position it had taken during discovery.

thus, as we pointed out in our response, the most recent Mt. Sinai District Court opinion simply has no relevance to the scholarship issue in this case since no scholarship issue was litigated in Mt. Sinai. See U.S. v. Mt. Sinai, 353 F.Supp. 2d 1217 at fn. 7 (S.D. Fla. 2005)(the earlier Mt. Sinai decision). Thus this most recent Mt. Sinai decision is irrelevant to the issues raised in the United States' pending motion for summary judgment.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' REPLY TO REPLY OF DEFENDANT PARTNERS HEALTHCARE SYSTEM, INC. TO UNITED STATES' RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY has this 4th day of August, 2008, been electronically filed with the Clerk of the District Court using its CM/ECF system.

/s/ stephen t. lyons
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